



## FM-QS-302 Consultant Appointment Agreement – Short Form

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### Commercial and Procurement

# FM-QS-302 Consultant Appointment Agreement – Short Form

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## FM-QS-302





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### Appointment Particulars

THIS AGREEMENT is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_. (\*)

(\*) Not before the Contractor enters into the main Building Contract with Great Ormond Street Hospital for Children NHS Foundation Trust.

The Client (also referred to as “the Contractor” within this agreement):

**John Sisk & Son (Holdings) Limited** of 1 Curo Park, Frogmore, St Albans, Hertfordshire, AL2 2DD

The Consultant (*Company name*):

**Kingscote Design Limited** of 3-4 Oaks Court, Warwick Road, Borehamwood, Hertfordshire, WD6 1GS

Represented by (*Individuals name*): **John Sharkey**

Project: **Great Ormond Street Hospital for Children, Children’s Cancer Centre**

at **Great Ormond Street Hospital, Great Ormond Street, London, WC1N 3JH**

**Services:** The Consultant, subject to the Conditions of this Appointment, performs the services relating to the Project which are identified by reference in the Schedule.

**Fee:** The Consultant’s Fee for the Services is charged on a fixed price lump sum basis. These lump sum fixed prices are exclusive of VAT which will be charged in addition at the prevailing rate at the time of undertaking the Services:

Name/Position/Location	Lump Sum (£)
RIBA Stage 5 Construction Period - 20nr weekly site inspections and the preparation of a report on the TW’s installation to Camden Council, to cover the period from the installation of the basement sheet pile wall to the removal of the basement lateral propping (flying shores).	17,600.00
<b>TOTAL FEE FOR THIS APPOINTMENT</b>	<b>17,600.00</b>

Personnel provided by the Consultant are to be approved by the Client and its approval shall not be withheld unreasonably. The Client can reject a substitute only, if in its reasonable opinion the person to be utilised does not possess the required, skills, qualification and experience to provide the Services.




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**Payment Terms:** The Client pays the Fee by payment of the Consultant monthly invoices within 28 days from the date of the applicable monthly invoice by electronic transfer into the Consultant's nominated bank account.

**Limitation of Liability:** The maximum aggregate liability of the Consultant is £10,000,000.00

**Professional Indemnity Insurance:** The Consultant maintains professional indemnity insurance in the sum of £5,000,000.00. for any one claim except for claims relating to pollution or contamination which are in the aggregate.

Signed by or on behalf of the parties:

SIGNED by   
GER HAYES  
Managing Director UK South  
for and on behalf of the CLIENT

SIGNED by   
(Director) (ALESSIA PIRAS)  
for and on behalf of the CONSULTANT



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### Conditions

#### 1. Appointment

- 1.1 The Client appoints the Consultant to provide the Services and the Consultant accepts such appointment upon and subject to these Conditions (the “Appointment”). The Appointment takes effect on the date when the Consultant first commenced performance of the Services [insert date], irrespective of the date of this Appointment.

#### 2. Standard of Care

- 2.1 The Consultant, when performing the Services, exercise the reasonable skill and care to be expected of an appropriately qualified professional Consultant of the same discipline as the Representative Consultant holding itself out as having the competence and resources to perform the Services.

#### 3. Fee

- 3.1 As consideration for the performance of the Services, the Client pays the Consultant the Fee and the Reimbursable Expenses set out in the Appointment Particulars.

#### 4. Payment of Remuneration and Reimbursable Expenses

- 4.1 The Consultant will issue a draft monthly invoice for the Fee and Reimbursable Expenses to the Client 7 days from the end of the month to which the invoice refers. The Consultant and the Client will agree within 3 days following the issue of the draft monthly invoice the amount to be invoiced. The Consultant will then issue the agreed invoice within 4 days of agreement of the invoice. Payment of the Fee and the Reimbursable Expenses detailed on the agreed invoice shall be made so that the payment is received in the Consultant’s nominated bank account by the 28<sup>th</sup> day of the month following the month to which the invoice refers.

#### 5. Final Date for Payment and Withholdings

- 5.1 The Client pays all sums properly due under this Appointment to the Consultant not later than the 28<sup>th</sup> day of the month following the month to which the invoice refers (the “final date for payment”).

#### 6. Confidentiality

- 6.1 ‘Confidential Information’ means all confidential and proprietary information disclosed or provided to the Consultant by the Client for the purposes of the services and may include without limitation commercial, technical or general business information. The Consultant agrees that no right or licence is granted to it, its employees or associates, by the Client in relation to such information provided.
- 6.2 The Consultant undertakes that all Confidential Information disclosed or provided by the Client will be held in complete and strict confidence and shall not, without the Client’s prior written consent, be disclosed by the Consultant, including any of its employees or associates, whether in writing or orally, in whole or in part, to any other person. The Consultant further undertakes not to use Confidential Information for any purposes other than the scope of services under this agreement.



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- 6.3 The above restriction shall not apply to information which is (i) in the public domain except as a result of any violation of the Client's rights; or (ii) required to be disclosed by law, or regulation, or the order or any court or professional body, provided that to the extent that it is legally permissible and reasonably practicable the Consultant shall notify the Client beforehand so that it may take its own measures to prevent such disclosure if necessary.
- 6.4 The Consultant acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Consultant of this confidentiality agreement and that the Client shall also be entitled to the remedies of injunction, specific performance and equitable relief as may be appropriate. No failure or delay by the Client in exercising its right to enforce this confidentiality agreement and obtain relief shall operate as a waiver or preclude any subsequent action.
- 6.5 The confidentiality agreement under this section shall survive the termination of the underlying agreement for the provision of services by the Consultant to the Client and shall be governed by the Law of England & Wales.

### 7. Limitations of Liability

- 7.1 Except for liability for death or personal injury, the maximum aggregate liability of the Consultant to the Client under or in connection with this Appointment whether in contract or tort (including negligence not covered by the Consultant's PI Policy) or for breach of statutory duty) is limited to the amount specified in the Appointment Particulars. Any claim made under the Consultant's PI Policy is limited to the terms of the Consultant's PI Policy.
- 7.2 No action or proceedings for any breach of this Appointment may be commenced against the Consultant after the expiry of completion of the Services or practical completion of the Project.

### 8. Insurance

- 8.1 The Consultant maintains professional indemnity insurance in the sum specified in the Appointment Particulars, subject to such insurance being available in the insurance market on commercially reasonable terms and rates. The Consultant shall notify the Client if insurance ceases to be available in the market at commercially reasonable rates and terms.
- 8.2 The Consultant produces written evidence that this insurance is being maintained whenever reasonably requested to do so by the Client.

### 9. Copyright

- 9.1 Copyright in all drawings, plans, details, specifications, bills of quantities, schedules, reports, records, calculations and all other documents including computer software and revisions of the same ("Documents") prepared by the Consultant for the purposes of the Project remains the property of the Consultant. Subject to Clause 6(c), the Consultant grants to the Client a royalty-free, irrevocable, non-exclusive license to use and reproduce the Documents for any purpose relating to the Project.
- 9.2 The Consultant is not liable for any use of the Documents for any purpose other than that for which they were originally prepared.

### 10. Termination of Engagement

- 10.1 The Client may terminate the Consultant's engagement under this appointment by giving the Consultant 7 days' prior notice in writing.



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- 10.2 The Consultant may terminate its engagement under this appointment by giving the Client 7 days prior notice in writing. Notwithstanding this notice period the Consultant shall remain liable to complete all tasks in progress under the scope of the Project to the reasonable satisfaction of the Client and the Consultant shall be paid the associated Fees and Reimbursable Expenses
- 10.3 If a party is in material breach of its obligations under this Appointment and fails to remedy such breach within 7 days after the other party gives it written notice to do so, the party which gave such notice may immediately thereafter terminate the Consultant's engagement under this Appointment by giving written notice to that effect to the party in breach.
- 10.4 If a party becomes insolvent, then the other party may immediately terminate the Consultant's engagement under this Appointment by giving written notice to the insolvent party.

### 11. Payment upon Suspension or Termination by the Client

- 11.1 Upon any suspension or termination, the Client pays the Consultant in accordance with Clauses 4 and 5 (without prejudice to any rights the Client has in respect of any breach by the Consultant or its obligations under this Appointment):
- (a) the Fee, and any other sums which have accrued and agreed by the Client due up to the date of suspension or termination (as the case may be), less any amounts previously paid to the Consultant; and
  - (b) (save where such suspension or termination is due to the Consultant being in breach) all reasonable costs, disbursements and expenses properly and necessarily incurred by the Consultant (including any costs incurred in suspending and/or resuming performance of the Services) as a direct result of such suspension or termination.
- 11.2 Upon payment of the amount due under Clause 11.1, the Consultant hands over to the Client the Documents, subject to the terms of the copyright licence under Clause 9 and payment of the Consultant's reasonable copying charges.
- 11.3 Termination of the Consultant's engagement under this Appointment does not affect the accrued rights and remedies of the parties.

### 12. Assignment and Sub-Contracting

- 12.1 The Consultant does not assign or sub-contract any of its rights or obligations under this Appointment without the prior consent in writing of the Client (which consent is not to be unreasonably withheld or delayed).
- 12.2 The benefit of this Appointment may be assigned by the Client by way of an absolute legal assignment to any person providing finance or re-finance to the Client in connection with the Project or to any person (A1) acquiring the Client's interest in the Project and by A1 to another person (A2) acquiring A1's interest in the Project. No further or other assignment is permitted and, in particular, A2 is not entitled to assign this Appointment.

### 13. Disputes

- 13.1 Having first sought to resolve any dispute between the principals of both parties, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance



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with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within [14 working days] of notice of the dispute, the mediator will be nominated by the CEDR.

- 13.2 Notwithstanding any other provision of this Appointment and having first sought to resolve any dispute in accordance with Clause 13.1, either party may at any time refer any dispute under it to adjudication.

### 14. General

- 14.1 This Appointment supersedes any previous agreements or arrangements between the parties in respect of the Project.
- 14.2 Nothing in this Appointment confers or purports to confer any right to enforce any of its terms on any person who is not a party to it. Only the Client (and the Client's permitted assignees) and the Consultant can take action to enforce the terms of this Appointment.
- 14.3 Any reference to a statute or statutory provision is construed as a reference to that statute or provision as amended, consolidated, supplemented or re-enacted (with or without modifications) from time to time.
- 14.4 Where any Clause requires an act to be done within a specified period after or from a specified date, the period begins immediately after that date. Where the period includes Christmas Day, Good Friday or a day which is a public holiday in England & Wales, that day is excluded.
- 14.5 The Consultant will co-operate with the Client's staff and other consultant's utilised by the Client.
- 14.6 The senior representative for the Consultant is **John Sharkey**. The senior representative for the Client is **Stephen Knight-Stringer**. Any variations to this agreement will be agreed between the senior representatives before they are implemented and shall be agreed in writing.
- 14.7 Whilst the Consultant is undertaking services on behalf of the Client it will be obligated to comply with the Client's Health, Safety and Environmental Policy, Code of Conduct Policy and Anti-Bribery & Corruption Policy that is current at the time the Services are being carried out. The Consultant is obligated to familiarise itself with these Policies upon commencement of the Services.

### 15. Notices

- 15.1 Any notice under this Appointment shall be between the senior representatives and is deemed to be given if it is by e mail or in writing and delivered by hand or sent by pre-paid, recorded or special delivery post to the Client or the Consultant (as the case may be) at the address set out for each party in this Appointment or any other address notified by one party to the other in accordance with this Clause.
- 15.2 Any notice sent by hand is deemed received upon actual receipt by the party to whom it is addressed.
- 15.3 Any notice sent by a postal method described in Clause 15.1 is deemed received 48 hours after it was posted.





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### 16. Suspension of the Services

- 16.1 The Client may at any time give 7 days notice in writing to the Consultant requiring it to suspend all or part of the Services.
- 16.2 The Consultant resumes performance of the Service which has been suspended as soon as reasonably practicable after it receives written notice to do so from the Client.
- 16.3 The Consultant reserves the right to replace its personnel if they are no longer available to continue to provide the Services after the suspension period.
- 16.4 If the suspension continues for more than 3 months, either party may give notice in writing to the other terminating the Consultant's engagement under this Appointment.

### 17. Governing Law and Jurisdiction

- 17.1 This Appointment is governed by and construed in accordance with the law of England & Wales and the parties submit to the exclusive jurisdiction of the courts of England & Wales.

### 18. IR35

- 18.1 Where the Consultant is a Personal Service Company as defined by IR35 the Contractor will be responsible for providing a Status Determination Statement (SDS) to the Consultant.
- 18.2 The Consultant shall at all times ensure that it is responsible for all income tax and national insurance contributions (and for any and all other taxes imposed from time to time by HMRC) in respect of his employees and where necessary, its other agents, servants and suppliers working under its control for the purposes of this subcontract. Without prejudice to the generality of the foregoing, if:

- the Consultant is a person who is providing the consultancy services through an intermediary (including but without limitation any limited company, personal service company or umbrella company), and
- the Contractor has determined (via the issue of a 'Status Determination Statement') that the Consultant does not fall within HMRC's IR35 rules,
- but HMRC (or any court or other tribunal of competent jurisdiction) decides that the Consultant is and/or in respect of any period before the Consultant Date was within HMRC's IR35 rules,

then the Consultant shall indemnify the Contractor from and against any and all costs (including reasonable legal or other professional fees), damage, loss, expense, liability, claims and proceedings whatsoever as a result of such decision of HMRC (or of any court of other tribunal of competent jurisdiction).

- 18.3 Save as otherwise stated in this Agreement, the Consultant will be entitled to supply its services to any third party during the term of this Agreement provided that this in no way compromises or is not to the detriment of the supply of Services, and provided there is no conflict of interest.

- 18.4 The Consultant may substitute the Representative provided that –

- 18.4.1 Services remain as detailed in the Assignment Schedule;
- 18.4.2 The substitute is qualified, skilled and experienced to carry out the Services



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- 18.4.3 The substitute passes all relevant security checks;
- 18.4.4 No delay or reduction in quality shall occur due to the lack of technical or Contractor specific knowledge held by the substitute; and
- 18.4.5 If requested the representative provides, without charge, an effective handover to the substitute.
- 18.5 Where a substitute is sent by the Consultant there shall be no contractual or financial relationship between the Contractor and the substitute. The Consultant is solely responsible for arranging payments to the substitute and the substitute is solely answerable to the Consultant. The Representative and Consultant are solely responsible for sourcing a replacement.
- 18.6 The consultant will have complete autonomy in relation to determining the method of performance of Services. Neither the Contractor, nor any other person will, or has the right to supervise, direct or control the way the Services are provided by the Consultant or any person engaged by the Consultant.
- 18.7 Should the consultant be furnished with an email address from the Contractor in order to carry out its works it will ensure that its email signature reflects its independence from the Contractor and that it is solely working on behalf of the Client.
- 18.8 This Agreement, or any Assignment hereunder, is not intended by the Parties to constitute or give rise to a contract of service or an employment contract.
- 18.9 The Consultant is free to undertake other contracts for services for other parties at any time, either before, after, or concurrently with this contract for provision of services. The parties acknowledge and agrees that it does not have first call on the services of the Consultant and cannot require the Consultant to give the Contractor any automatic priority.
- 18.10 The Consultant will not be obliged to accept, any assignments, contracts, engagements, projects or request for services of any type whatsoever nor is the Consultant obliged to make its services available at any time. Specifically, both parties declare that they do not wish to create or imply any mutuality of obligations at any time, either during or in between any contracts or agreed project.
- 18.11 This Agreement and the duration of the Assignment may be extended by mutual agreement by the Parties signing a further Assignment Schedule.
- 18.12 If the SDS provided by the Contractor is disputed, the Consultant will have 45 days from the date of appeal to resolve the matter. No payments will be made to the consultant whilst the dispute is ongoing. Any appeal needs to be factual, and evidence based.
- 18.13 Once the Consultant works have been satisfactorily completed the engagement with the Consultant will cease, with no notice period applicable.



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### Schedule

The Services to be performed by the Consultancy Company are as identified below:

#### Scope of Services:

- a. To perform 20 [twenty] weekly site inspections and reporting for construction temporary works design and execution for Great Ormond Street Hospital Children's Cancer Centre.
- b. To prepare a one page report on the TW's installation to Camden Council, to cover the period from the installation of the basement sheet pile wall to the removal of the basement lateral propping (flying shores).

Services are to satisfy the planning condition requirement 23 Basement Engineer;

*The development hereby approved shall not commence until such time as a suitably qualified chartered engineer with membership of the appropriate professional body has been appointed to inspect, check for compliance with the design (as approved by the local planning authority and building control body) and monitor the critical elements of both permanent and temporary basement construction works throughout their duration. Details of the appointment and the appointee's responsibilities shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. Any subsequent change or reappointment shall be confirmed forthwith for the duration of the construction works.*

*Reason: To safeguard the appearance and structural stability of neighbouring buildings and the character of the immediate area in accordance with the requirements of policies D1, D2 and A5 of the London Borough of Camden Local Plan 2017.*

#### Additional Services (if instructed and agreed in accordance with Clauses 4.1 and 14.6 of this Agreement:

- c. Additional site visits and reporting at a rate of £880.00 per visit inclusive of all expenses.
- d. Technical Consultant at an hourly rate of £110.00
- e. Associate at an hourly rate of £98.00
- f. Senior Temporary Works Engineer at an hourly rate of £85.00